



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,702	08/05/2003	Kimberly A. Campana	29939/38771	7556

4743 7590 07/26/2006

MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,702

Applicant(s)

CAMPANA, KIMBERLY A.

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4, 5, 7, 8,10-30,32,33,35-37,39,40,42 and 43 is/are pending in the application.
4a) Of the above claim(s) 10-29 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 0.33,1,2,4,5,7,8,30,32,35-37,39,40,42 and 43 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 37, 39, and 40 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971).

As to Claims 1 and 37, Fredrickson et al. discloses a lawn edging (Figs. 1-3) comprising a hollow (see Fig. 2) middle or end block (11 of Figs. 1-3), each of the hollow middle or end block being free of openings or passages except for a single pressure equalization hole (region where element 12 enters the block - see Figs. 1 and 2); a hinge (22 of Figs. 1-3), each plastic hinge being free of metal; and the block including an upper and lower portions (top and bottom of 11 in Figs. 1-3), the upper portion including a front face (a face on 18 of Figs. 1-3) comprising a rough, three-dimensional simulated rock texture ("Moonstone" of col. 1 lines 40-44), each lower portion being tapered (from Fig. 3 in that the lower portion tapers out) and including two edges that extend inwardly towards each other as they extend downward from the upper portion ("edges" are portions of 13 in Figs. 1 and 2 that are where leadline of 13 ends), the lower portion further including a front face and a rear face ("face" is portion of 13 between "edges" in Figs. 1 and 2) that extends towards each other as they extend downward from the upper portion. Not disclosed is a plurality of middle blocks and two end blocks and the hinge being a living hinge

Art Unit: 3643

that connects the blocks. Boeve, however, discloses an edging with a plurality of blocks (shown, for example, in Figs. 2, 3, 8) connected by a living hinge (3 of Fig. 8; Figs. 9a-9d; col. 4 lines 31-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Fredrickson et al. by having a plurality of blocks connected by a living hinge as disclosed by Boeve so as to allow the edging surround any shaped walkway or garden and to have displacement in the horizontal direction and a relatively wide angular displacement (col. 4 lines 31-39).

As to Claims 4 and 39, the limitations of Claims 1 and 37 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that “if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the Applicant’s edging is anticipated by Fredrickson et al. as modified by Boeve. The process by which the edging is made is not patentably distinct.

As to Claims 5 and 40, Fredrickson et al. as modified by Boeve further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Boeve at col. 4 lines 31-39).

Art Unit: 3643

Claim 2, 30, 32, and 33 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) in further view of Clark Jr. (US 6,138,406).

As to claim 2, the limitations of claim 1 are disclosed and described above. Not disclosed are either of the faces including a barb. Clark Jr., however, discloses an edging with faces with barbs (42 of Fig. 1; col. 1 lines 60-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve by including barbed ribs on the faces as disclosed by Clark Jr. so as to provide a removal resistance means (Clark Jr. at col. 1 lines 60-68) so that the edging stays in place.

As to Claim 30, Fredrickson et al. discloses a lawn edging (Figs. 1-3) comprising a plurality of plastic hollow (see Fig. 2) middle or end block (11 of Figs. 1-3), each of the hollow middle or end block being free of openings or passages except for a single pressure equalization hole (region where element 12 enters the block - see Figs. 1 and 2); a plastic hinge (22 of Figs. 1-3), each plastic hinge being free of metal; each middle and end block including an upper and lower portions (top and bottom of 11 in Figs. 1-3), the upper portion including a front face (a face on 18 of Figs. 1-3) comprising a rough, three-dimensional simulated rock texture ("Moonstone" of col. 1 lines 40-44), each lower portion being tapered (from Fig. 3 in that the lower portion tapers out) and including two edges that extend inwardly towards each other as they extend downward from the upper portion ("edges" are portions of 13 in Figs. 1 and 2 that are where leadline of 13 ends), the lower portion further including a front face and a rear face ("face" is portion of 13 between "edges" in Figs. 1 and 2) that extends towards each other as they

Art Unit: 3643

extend downward from the upper portion. Not disclosed is a plurality of middle blocks and two end blocks the plastic living hinge connecting the blocks; and, at least one of the faces including a barbed rib. Boeve, however, discloses an edging with a plurality of blocks (shown, for example, in Figs. 2, 3, 8) connected by a living hinge (3 of Fig. 8; Figs. 9a-9d; col. 4 lines 31-39); and, Clark Jr. discloses an edging with faces with barbs (42 of Fig. 1; col. 1 lines 60-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging of Fredrickson et al. by having a plurality of blocks connected by a living hinge as disclosed by Boeve so as to allow the edging surround any shaped walkway or garden; and, to include barbed ribs on at least one face as disclosed by Clark Jr. so as to provide a removal resistance means (Clark Jr. at col. 1 lines 60-68) so that the edging stays in place..

As to Claim 32, the limitations of Claim 30 are disclosed as described above. Not disclosed is the lawn edging fabricated by a continuous forming process. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve and Clark Jr. by making with a continuous vacuum forming process as a known method of shaping plastic objects. MPEP 2113 (Product-by-Process Claims) states that “if the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art product was made by a different process.” Here, the Applicant’s edging is anticipated by Fredrickson et al. as modified by Boeve and Clark Jr. The process by which the edging is made is not patentably distinct.

As to Claim 33, Fredrickson et al. as modified by Boeve and Clark Jr. further disclose the living hinge permitting two adjacent blocks to be positioned at an angle ranging from about 180° to 90° (Boeve at col. 4 lines 31-39).

Claims 7, 8, 42, and 43 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) in further view of Kono (JP2000-300071).

As to claims 7, 8, 42, and 43, the limitations of Claims 1 and 40 are disclosed as described above. Not disclosed are the blocks made of two or more plastic materials. Kono, however, discloses the blocks made of two or more plastic materials (“flexible synthetic resins” of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve by using several plastics and polyethylene as disclosed by Kono depending upon availability of material.

Claims 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Fredrickson et al. (US 5,803,594) in view of Boeve (US 5,615,971) and Clark Jr. (US 6,138,406) in further view of Kono (JP2000-300071).

As to claims 36 and 36, the limitations of Claim 33 are disclosed as described above. Not disclosed are the blocks made of two or more plastic materials. Kono, however, discloses the blocks made of two or more plastic materials (“flexible synthetic resins” of para. 0007 of translation of Kono) with one being polyethylene (para. 0007 of translation of Kono). It would

have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging of Fredrickson et al. as modified by Boeve and Clark Jr. by using several plastics and polyethylene as disclosed by Kono depending upon availability of material.

Response to Arguments

Applicant's arguments filed 5 May 2006 have been fully considered but they are not persuasive. Applicant's arguments are: (1) Fredrickson et al. does not disclose a landscape edging but a outdoor lighting accessory (Remarks page 4, 3rd and 4th para.); (2) Fredrickson et al. does not disclose a hinge (Remarks page 5, top half); (3) Fredrickson et al. does not disclose a tapered edging (Remarks page 5, last para.); and, (4) no motivation to combine the references (Remarks page 6).

As to argument (1), Fredrickson et al. discloses a device that used in landscaping (see, for example, the abstract). Hence, this device is capable of being an edging where, for example, it illuminates the sidewalk or a garden.

As to argument (2), Examiner considers Fredrickson et al. to disclose a hinge because a hinge can be defined as "a jointed or flexible device on which a door lid, or other swinging part turns" (Merriam-Webster's Collegiate Dictionary at page 548). Here, element 22 of Fredrickson et al. is capable of being a hinge, or can be considered a hinge, because it is a flexible device on which a swinging part (element 11) turns.

As to argument (3), the edging of Fredrickson et al. is considered to be tapered because its side is not at a right angle to its top. Figures 1 through 3 show the sides tapered.

As to argument (4), Examiner considers there to be motivation to combine the references because all of the references deal with landscaping devices.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

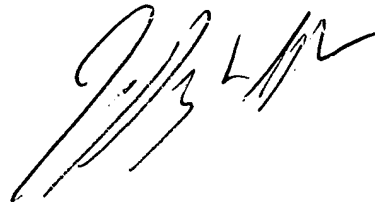
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'J. L. Gellner', is positioned to the left of the printed name.

Jeffrey L. Gellner
Primary Examiner
Art Unit 3643